

**ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of: )

Merritt & Walding Properties, LLP )

Merri Mart #20 )

UST Facility ID No. 17690-097-011299 )

Mobile, Mobile County, Alabama )

**PROPOSED  
ADMINISTRATIVE ORDER**

No. \_\_\_\_\_

**FINDINGS**

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.); and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter the "Department" or "ADEM") makes the following FINDINGS:

1. Merritt & Walding Properties, LLP (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at Merri Mart #20, 2258 Airport Boulevard, Mobile, Mobile County, Alabama, designated as ADEM Facility I.D. Number 17690-097-011299.

2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rpl.Vol.), ADEM is the State Environmental Control Agency for the purposes of federal environmental law, including 42 U.S.C. §§ 6991 to 6991(m), as amended.

4. ADEM is authorized to administer and enforce the provisions of the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.).

5. Based upon an inspection dated September 23, 2011 of the UST facility and/or a review of facility records, the Department has documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code r. 335-6-15-.45(3), upon implementation of delivery prohibition, it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to an underground storage tank facility that is under delivery prohibition.

7. The Owner accepted delivery of a regulated substance to an underground storage tank facility that was under delivery prohibition.

8. A Notice of Delinquency (NOD) dated May 9, 2011, was issued by the Department requiring the Owner to submit spill catchment basin tests, the results of sump inspections for all pressurized piping and under dispenser containment, corrosion protection test results for premium tank and a passing 0.2 gallon per hour leak test printout for the midgrade and premium tanks from the automatic tank gauge.

9. On June 27, 2011, upon the Owner's failure to respond to the NOD dated May 9, 2011, the Department issued a Notice of Violation (NOV) again requiring the owner to submit spill catchment basin tests, the results of sump inspections for all pressurized piping and under dispenser containment, corrosion protection test results and a passing 0.2 gallon per hour leak test printout from the automatic tank gauge.

10. On August 15, 2011, upon the Owner's failure to respond to the NOD dated May 9, 2011 and a Notice of Violation dated June 27, 2011, the Department issued a Notice of Proposed Delivery Prohibition requiring the Owner to respond to the Department in reference to their failure to submit spill catchment basin tests, the results of sump inspections for all pressurized piping and under dispenser containment, corrosion protection test results for premium tank and a passing 0.2 gallon per hour leak test printout for the midgrade and premium tanks from the automatic tank gauge.

11. On September 14, 2011, the Department placed the facility on delivery prohibition.

12. On September 23, 2011, a Department inspection of records submitted by the facility determined that the facility received fuel on September 22, 2011 while still on delivery prohibition.

13. On October 7, 2011, upon the Department's receipt of spill catchment basin tests, sump inspections, corrosion protection plans and specifications for impressed current system installation and 0.2 gallons per hour leak tests from the automatic tank gauge for the midgrade and premium tanks the facility was removed from the Delivery Prohibition List.

14. Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rpl.Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00

for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall be a separate violation.

In arriving at the civil penalty assessed in this matter, the Department has considered the following:

A. Seriousness of the Violation:

The Owner/Operator did not ensure that the facility was not on delivery prohibition. The violations impede the Department's regulatory authority over USTs for threats to public health, safety and the environment.

B. Standard of Care:

The Owner/Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. Economic Benefit Which Delayed Compliance May Have Conferred:

The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Owner.

D. Efforts to Minimize or Mitigate the Effects of the Violation Upon the Environment:

There are no known environmental effects as a result of the alleged violations.

E. History of Previous Violations:

The Owner/Operator does not have a history of previous violations.

F. Ability to Pay:

The Owner/Operator has not alleged an inability to pay the civil penalty.

G. Other Factors: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

Violation Type

Penalty Range for Violation Type

Accepted delivery of a regulated substance while on delivery prohibition

\$0 - \$25,000

**ORDER**

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(12) and 22-22A-5(18), Ala. Code (2006 Rpl.Vol.), it is hereby ORDERED:

A. That, within forty-five days of the effective date of this Administrative Order, the Owner shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. Failure to pay the civil penalty within forty-five days of the effective date of this Administrative Order shall constitute cause for the Department to file a civil action in the Circuit Court of Montgomery County, Alabama. Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management, and addressed as follows:

**Office of General Counsel**  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

B. That, should any provisions of this Administrative Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law, and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

C. That, except as otherwise set forth herein, this Administrative Order is not and shall not be interpreted to be a permit or modification of a permit under Federal, State or local law, and shall not be construed to waive or relieve the Owner of the obligation to comply in the future with all applicable law.

D. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owner of the violations cited herein.

E. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Owner for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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Lance R. LeFleur  
Director

# ATTACHMENT A

## Penalty Synopsis

Merritt & Walding Properties  
PO Box 2823  
Mobile, AL 36652  
Merri Mart #20  
2258 Airport Blvd, Mobile  
17690-097-011299

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-6-15-.45(3) states that it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to a UST facility that is under delivery prohibition.	1	\$2,500	\$2,500	\$0
<b>Totals:</b>	1	\$2,500	\$2,500	\$0

Economic Benefit\*: \$0  
Mitigating Factors\*: \$0  
Ability to Pay\*: \$0  
Other Factors\*: \$0

**Total Civil Penalty: \$5,000**

### Footnotes

\* See the "Findings" of the Order for a detailed description of each violation and the penalty factors